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ROBERT R. DI TROIO
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W.D. OF TN. JACKSON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
VS.) No. 04-10091-T-An
)
JUSTIN MCCOMIC,)
)
Defendant.)

ORDER GRANTING MOTION TO BE PERMITTED TO APPEAL AS PAUPER
AND DENYING MOTION TO WITHDRAW

On April 22, 2005, Defendant filed an “affidavit in support of request to proceed *in forma pauperis*.” However, Defendant did not comply with Rule 24 of the Federal Rules of Appellate Procedure which provides that “a party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court” and must attach an affidavit showing in detail the information prescribed by Form 4 of the Appendix of Forms to the Federal Rules of Appellate Procedure as to the individual's ability to pay or give security for fees and costs; the right to redress; and the issues that the party intends to present on appeal. Consequently, the court ordered Defendant to file a motion in this court which meets the requirements of Rule 24 if he intends to proceed on appeal *in forma pauperis*. See Order 4/29/05.

On May 6, 2005, Defendant filed the requisite information. His affidavit states that

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he has no source of income and no assets. The issue he intends to present on appeal is whether his sentence comports with the requirements set forth in United States ve. Booker.

Because Defendant's motion complies with the requirements of Fed. R. App. P. 24 and because Defendant has demonstrated through his affidavit that he is indigent, Defendant's motion to proceed on appeal *in forma pauperis* is GRANTED.

Defendant's attorney has moved to be relieved as counsel of record on the ground that he was retained for the trial only. Sixth Circuit Rule 101 provides that "[t]rial counsel in criminal cases, whether retained or appointed by the district court, is responsible for the continued representation of the client on appeal until specifically relieved by this Court." A notice of appeal was filed on behalf of Defendant on April 25, 2005. Thus, Defendant's motion should be directed to the Sixth Circuit Court of Appeals.

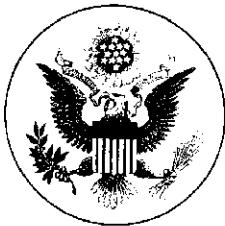
IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE



DATE



Notice of Distribution

This notice confirms a copy of the document docketed as number 40 in case 1:04-CR-10091 was distributed by fax, mail, or direct printing on May 10, 2005 to the parties listed.

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Honorable James Todd
US DISTRICT COURT